

#### § 801.313

(b) A witness who is summoned and responds is entitled to the same witness and mileage fees as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay the witness and mileage fees.

#### § 801.313 Subpena.

(a) On the request of a party and for good cause shown, a hearing officer may issue a subpoena for the appearance of a witness or for the production of documentary evidence.

(b) A hearing officer may quash a subpoena for good cause shown.

(c) The party at whose request a subpoena is issued is responsible for arranging for service. The officer or person making service shall show the original subpoena to the person served, read the subpoena to him if he is unable to read, and deliver a copy of the subpoena to him.

(d) When a U.S. Marshal or his deputy serves a subpoena, he shall evidence the service by his return on the subpoena. When someone other than a U.S. Marshal or his deputy serves a subpoena, the person serving the subpoena shall make an affidavit, stating the date, time, and the manner of service, and shall return the affidavit on, or with, the original subpoena in accordance with the form thereon. When the U.S. Marshal, his deputy, or other person, as appropriate, cannot serve the subpoena, he shall state his reason for the failure on the original subpoena. When the person named in the subpoena accepts service of the subpoena in writing, no other evidence of return is necessary. The person responsible for serving a subpoena shall return the original subpoena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, to the officer presiding at the hearing at which the person subpoenaed is required to appear.

#### § 801.314 Evidence.

(a) The application of the challenged person is prima facie evidence that he has the qualifications that are stated in the application.

(b) Rules of evidence are not strictly applied but the hearing officer shall ex-

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clude irrelevant or unduly repetitious evidence.

(c) Each exhibit of a documentary character shall be submitted to the hearing officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the hearing officer.

#### § 801.315 Decision.

The hearing officer who presided at the hearing, unless he has become unavailable, shall decide the case on the record. If no hearing is held, the hearing officer to whom the challenge was assigned shall decide the case on the record. The decision shall be in writing and shall state the reasons or basis for the decision. Copies of the decision shall be served on the parties. The decision shall be issued not more than 15 days after the challenge is docketed under § 801.305. The record, including the decision, shall be certified as true and complete by the hearing officer and forwarded to the Examiner (State Supervisor), U.S. Office of Personnel Management in the State involved at the address set out in appendix C to this part. It shall be available to interested persons at that office.

#### § 801.316 Action after challenge is sustained.

When a hearing officer sustains a challenge, he shall, after the courts have finally sustained his decision or the time for petitioning for a court review of that decision has expired, instruct an examiner to remove the name of the challenged person from the eligibility list and cancel that person's certificate evidencing his eligibility to vote. The examiner shall notify the challenged person, the appropriate election official, the Attorney General, and the attorney general of the appropriate State of his action.

#### § 801.317 Appeal.

There is no administrative appeal from the decision of a hearing officer or from any of his rulings. A petition for review of the decision of a hearing officer may be filed in court as provided in the Act.

### Subpart D—Removals From Eligibility List

#### § 801.401 Scope.

The subpart prescribes the bases and procedures for removals from eligibility lists under the Act.

#### § 801.402 Bases for removals.

An examiner shall remove the name of a person from an eligibility list:

- (a) Pursuant to the instruction of a hearing officer under § 801.316;
- (b) Pursuant to the order of a court having jurisdiction under the Act;
- (c) When the examiner determines that the listed person has lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States and in accordance with the instructions concerning loss of eligibility to vote prescribed by the OPM after consultation with the Attorney General which shall be set out in appendix D to this part and incorporated in and made a part of this section.

#### § 801.403 Procedure for removals determined by examiners.

An examiner may remove the name of a listed person as authorized by § 801.402(c) only after:

- (a) Giving the person a notice of the proposed removal of his name stating the reason why the removal is proposed and offering the person an opportunity to answer the notice of proposed removal in person or in writing or both within ten days after his receipt of that notice; and
- (b) Considering all available evidence concerning the person's loss of eligibility to vote, including any timely answer submitted by the person.

#### § 801.404 Notification of removals.

When an examiner removes the name of a person from an eligibility list he shall notify the person, the appropriate election officials, the Attorney General, and the attorney general of the State of that removal and the reason therefor.

### Subpart E—Voting Complaint

#### § 801.501 Scope.

This subpart prescribes the procedure for filing and processing a complaint under the Act that a person was not permitted to vote.

#### § 801.502 Making a complaint.

A person who has been listed on an eligibility list or registered by an appropriate election official and who is eligible to vote but has not been permitted to vote may make a complaint regarding that denial to an examiner for the political subdivision where the denial occurred. The complaint may be either oral or in writing and must be made within 48 hours after the closing of the polls.

#### § 801.503 Processing a complaint.

The examiner to whom a complaint is made shall promptly ascertain whether the complaint is well founded. If the examiner determines the complaint is not well founded he shall notify the person who complained of his determination and take no further action on the complaint. If the examiner determines that the complaint is well founded the examiner shall notify the person and the Attorney General of his determination and of the reason for that determination and furnish the Attorney General with any papers or evidence relating to the complaint.

#### APPENDIX A TO PART 801

This appendix sets out the dates, times, and places designated by the OPM for filing an application in each political subdivision, and sets out the forms of application prescribed by the OPM.

#### DATES, TIMES, AND PLACES FOR FILING

Offices at which applications may be filed will be open in each State in the county or parish and at the place set forth in this appendix beginning on the date specified and continuing thereafter until a closing date is given. Each office will be open Monday through Saturday (except on a legal holiday) between the hours of 8:30 a.m. and 4:30 p.m., except that the OPM may change the hours and days on which any office will be open for filing applications by posting advance notice of the change at the place set forth in this appendix.